




05-10-07

AF
DFW

Atty. Dkt. No. 047711-0221

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronald J. Lebel et al.
Title: AMBULATORY MEDICAL
APPARATUS WITH HAND
HELD COMMUNICATION
DEVICE
Appl. No.: 09/768,196
Filing Date: 1/22/2001
Examiner: Matthew F. Desanto
Art Unit: 3763
Confirmation 1919
Number:

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Mail Stop Appeal Brief - Patents Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EM 037674796 US	May 9, 2007
(Express Mail Label Number)	(Date of Deposit)
Kumar Maheshwari	
(Printed Name)	
	
(Signature)	

REPLACEMENT SECTION FOR APPEAL BRIEF UNDER 37 CFR 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is responsive to the Notification of Non-Compliant Appeal Brief mailed April 11, 2007, concerning the above-referenced patent application.

Remarks/Arguments begin on page 2 of this document.

Please amend the Appeal Brief filed on September 20, 2006 as follows:

Amendment to the Appeal Brief:

In accordance with 37 C.F.R. 1205.03, please replace Section V. of the Appeal Brief with the following new Section V.:

V. SUMMARY OF CLAIMED SUBJECT MATTER:

Embodiments of the present invention relate, generally, to a medical system having an ambulatory medical device (MD) and a communication device (CD). The communication device (CD) includes a display and is controlled to depict a plurality of patient programmable options on at least one first menu. At least one of the patient programmable options may be enabled and disabled at different times from a second menu. When disabled, the at least one patient programmable option is no longer displayed on the at least one first menu as an option while at least one enabled option is displayed on the first menu.

As the popularity and functionality of medical devices increases, certain medical devices may be provided with a variety of optional functions, for example, but not limited to, sensing or monitoring of one or more conditions or activities of a patient or the patient's environment, providing a treatment to the patient, providing information or alarm signals, providing capabilities of customizing or modifying displays, as well as other functions. A given medical device may be provided with a variety of different functions that are useful to the overall group of intended users. However, in many contexts, certain optional functions may not be desirable or, otherwise, are not employed by any one particular user in the overall group.

According to embodiments of the present invention, an undesired or un-employed option may be disabled and the disabled option is removed from an options menu, to simplify the menu and improve operability to the user. The user need not view or scroll through numerous disabled options to locate a desired option on the menu. In the context of a medical system, improvements in the ability of a patient or other user to quickly and easily identify an option on a menu can provide significant improvements in operability of the medical system. Embodiments of the present invention can improve and simplify the control and operation of medical devices

that are programmed with options for a wide range of patients. Thus, in the context of medical systems with programmable medical devices, embodiments of the present invention can provide a significant improvement in customized and personalized patient care.

Independent claims 12 and 29 can be mapped to the specification, for example, as follows:

Independent claim 12 recites a medical system, including an ambulatory medical device (MD) comprising MD electronic control circuitry that further comprises at least one MD telemetry system. (Applicant's Specification (hereinafter Specification) page 4, lines 4 – 31; page 19, lines 3 – 18; page 6 line 30 – page 7 line 10; page 30, lines 1-32; and Figs. 1A, 1B and 2;). Claim 12 further recites, at least one MD processor that controls, at least in part, operation of the MD telemetry system and operation of the medical device. (Specification page 7, lines 4-10, lines 15-28; line 30-33). Claim 12 also recites the medical device being configured to provide a treatment to a body of a patient or to monitor a selected state of the body. (Specification page 8, lines 1-5, lines 10-18, and lines 25-30; page 12 lines 20-25; page 13, lines 15-20;).

Another feature recited in claim 12 is a communication device (CD) comprising CD electronic control circuitry that further comprises at least one CD telemetry system and at least one CD processor that controls, at least in part, operation of the CD telemetry system and operation of the communication device, wherein the CD telemetry system sends messages to or receives messages from the MD telemetry system using RF transmissions. (Page 4, lines 12-17, lines 25 – 30; page 5, lines 5 10, lines 18 – 24; page 6, lines 7-15; page 7, lines 21 – 25; page 8; lines 2 – 8, lines 15-22, line 29 – page 9 line 7). RF transmission is discussed in many locations in the specification especially on page 38 line 33 - page 39 line 3; page 53, line 14; page 57 line 5 – 6 and line 31.

Yet another feature of claim 12 recites the CD display is controlled to depict a plurality of patient programmable options (Page 19, line 15) on at least one first menu. and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu such that when disabled the at least one patient programmable option is no longer displayed on the at least one first menu as an option while at least one enabled option is

displayed on the at least one first menu. (Specification page 4, lines 12-14, and page 19, lines 3-2; page 39, lines 4-23, page 41, lines 28-31 and page 43, lines 30-32).

Independent claim 29, recites some similar features as claim 12 except it recites, the CD display controlled to depict a plurality of patient programmable options on at least one first display screen and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second display screen such that when disabled the at least one patient programmable option is no longer displayed on the at least one first display screen as an option while at least one enabled option is displayed on the at least one first display screen. (Page 19 lines 10 – 17 and Fig. 5).

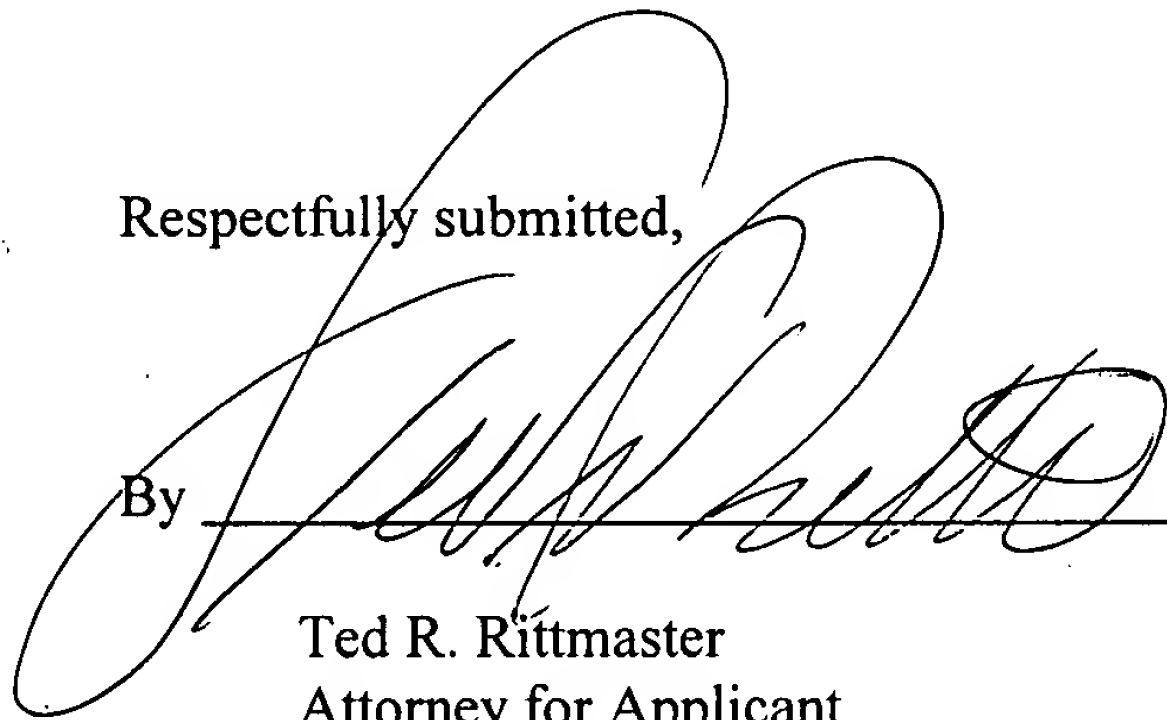
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Date May 9, 2007

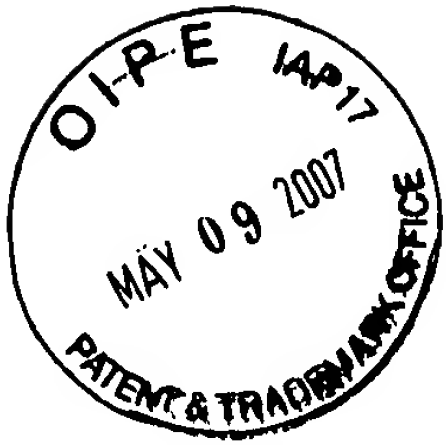
FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (310) 975-7963
Facsimile: (310) 557-8475

Respectfully submitted,

By



Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933



Atty. Dkt. No. 047711-0221

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronald J. Lebel et al.

Title: AMBULATORY MEDICAL
APPARATUS WITH HAND
HELD COMMUNICATION
DEVICE


Appl. No.: 09/768,196

Filing Date: 1/22/2001

Examiner: Matthew F. Desanto

Art Unit: 3763

Confirmation 1919
Number:

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Mail Stop Appeal Brief - Patents Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EM 037674796 US	May 9, 2007
(Express Mail Label Number)	(Date of Deposit)
Kumar Maheshwari	
(Printed Name)	
	
(Signature)	

AMENDMENT TRANSMITTAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is an amendment in the above-identified application.

☒ Replacement Section for Appeal Brief Under 37 C.F.R 41.37 (4 pgs).

☐ Assertion of Small Entity status is enclosed.

☒ The fee required for additional claims is calculated below:

☐ Applicant hereby petitions for an extension of time under 37 C.F.R. §1.136(a) for the total number of months checked below:

<input type="checkbox"/> Extension for response filed within the first month:	\$120.00	\$0.00
<input type="checkbox"/> Extension for response filed within the second month:	\$450.00	\$0.00
<input type="checkbox"/> Extension for response filed within the third month:	\$1,020.00	\$0.00
<input type="checkbox"/> Extension for response filed within the fourth month:	\$1,590.00	\$0.00
<input type="checkbox"/> Extension for response filed within the fifth month:	\$2,160.00	\$0.00
EXTENSION FEE TOTAL:		\$0.00
<input type="checkbox"/> Statutory Disclaimer Fee under 37 C.F.R. 1.20(d):	\$130.00	\$0.00
CLAIMS, EXTENSION AND DISCLAIMER FEE TOTAL:		\$0.00
<input type="checkbox"/> Small Entity Fees Apply (subtract ½ of above):		\$0.00
Extension Fees Previously Paid:		\$0.00
TOTAL FEE:		\$0.00

☒ The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

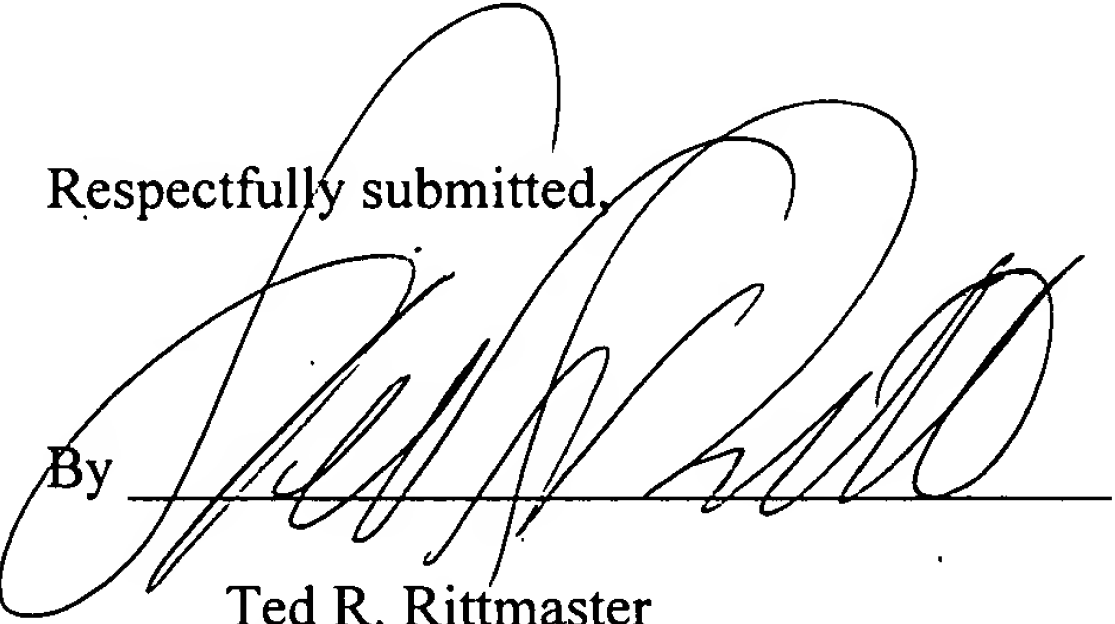
Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Date: May 9, 2007

FOLEY & LARDNER LLP
 Customer Number: 23392
 Telephone: (310) 975-7963
 Facsimile: (310) 557-8475

Respectfully submitted,

By


 Ted R. Rittmaster
 Attorney for Applicant
 Registration No. 32,933